IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABE BEAUPERTHUY, et al., Plaintiffs, v. 24 HOUR FITNESS USA, INC., a California corporation dba 24 HOUR FITNESS; SPORT AND FITNESS CLUBS OF AMERICA, INC., a California corporation dba 24 HOUR FITNESS, Defendants.	Case No. 06-715 SC ORDER RE: MOTIONS FOR SUMMARY JUDGMENT

I. INTRODUCTION

This is a collective action filed by employees and former employees of Defendants 24 Hour Fitness USA, Inc. and Sport and Fitness Clubs of America, Inc. (collectively "24 Hour" or "Defendants"). Before the Court are two Motions for Summary Adjudication, both filed by Plaintiffs. Motion for Summary Adjudication Number One is filed on behalf of a class of employees and former employees who worked as managers for Defendants ("Managers Class"). Docket No. 295 ("First Mot."). Motion for Summary Adjudication Number Two is filed on behalf of a class of employees and former employees who worked as personal trainers for Defendants ("Trainers Class"). Docket No. 297 ("Second Mot."). Defendants have filed an Opposition to each Motion. Docket Nos.

307 ("Second Opp'n"), 314 ("First Opp'n"). Plaintiffs have filed Replies. Docket Nos. 323 ("First Reply"), 327 ("Second Reply").

In addition, Defendants have filed a Motion for Denial or Continuance of Plaintiffs' Motions for Summary Adjudication Under Rule 56(f). Docket No. 340 ("56(f) Mot."). Plaintiffs have submitted an Opposition to the 56(f) Motion, Docket No. 341 ("56(f) Opp'n"), and Defendants have submitted a Reply, Docket No. 342 ("56(f) Reply"). Having considered all of the papers submitted by both parties, this Court concludes that the matter is appropriate for decision without oral argument. Because of the current stage of this litigation, and as detailed below, the Court concludes that Plaintiffs' Motions must be DENIED. Accordingly, Defendants' 56(f) Motion is GRANTED.

II. BACKGROUND

The Court has previously issued several orders that detail the procedural and factual background in this dispute. See Docket Nos. 26 ("Apr. 11, 2006 Order"), 66 ("Nov. 28, 2006 Order"), 124 ("Mar. 6, 2007 Order"), 190 ("Mar. 24, 2008 Order"). This Order will therefore assume familiarity with the background of this case. In short, Plaintiffs are alleging that Defendants' employment and payment policies improperly denied Plaintiffs overtime payments, in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. ("FLSA"). See First Am. Compl. ("FAC"), Docket No. 33, ¶¶ 85-97. The Court has conditionally certified two classes in this matter: the Managers Class and the Trainers Class. See Mar. 24, 2008 Order; Mar. 6, 2007 Order. Defendants have raised a number of affirmative defenses to Plaintiffs allegations. In particular,

Defendants claim as their twelfth affirmative defense that:

> Plaintiffs' claims, and the claims of individuals on whose behalf Plaintiffs seek relief, are barred in whole or in part to the extent that the work performed falls within the exemptions, exclusions, exceptions, or credits as provided by the FLSA, including but not limited to 29 U.S.C. §§ 201 et seq., 207(g), 207(i), 213(a)(1), 213(a)(17), and 213(b)(1).

Answer to FAC, Docket No. 35, at 31. In other words, Defendants are claiming that Plaintiffs' claims are barred because Plaintiffs were subject to one or more of the exemptions that Congress created to the FLSA's obligations to pay employees for overtime.

The present motions arise in the midst of discovery. When Plaintiffs filed their Motions for Summary Adjudication, on August 21, 2009, the nonexpert discovery cut-off date was October 30, 2009.[1] See Docket No. 283. Defendants have explained that they have not yet deposed any of the members of either Class. 56(f) Mot. Ex. A ("Kloosterman 56(f) Decl.") ¶ 2.[2]

III. LEGAL STANDARD

"The standards and procedures for granting partial summary judgment, also known as summary adjudication, are the same as those for summary judgment." Mora v. Chem-Tronics, Inc., 16 F. Supp. 2d 1192, 1200 (S.D. Cal. 1998). Entry of summary judgment is proper

[1] This Court has since granted Defendants' request to extend the discovery cutoff until January 28, 2010. Docket No. 321.

[2] John C. Kloosterman, counsel for Defendants, has filed a declaration in support of the 56(f) Motion. In it, he explains Defendants' reasons for not yet completing depositions even though discovery has been ongoing in this case for several years. In particular, he explains that Defendants are waiting to receive damage estimates from Plaintiffs, and references recent talks with Plaintiffs regarding the establishment of sampling methodology or a representative group of Plaintiffs. Kloosterman 56(f) Decl. ¶ 2.

"if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Entry of summary judgment in a party's favor is also appropriate when there are no material issues of fact as to the essential elements of the party's claim. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986).

"The moving party bears the initial burden to demonstrate the absence of any genuine issue of material fact." Horphag Research Ltd. v. Garcia, 475 F.3d 1029, 1035 (9th Cir. 2007). If the moving party fails to meet its burden, then "the nonmoving party has no obligation to produce anything, even if the nonmoving party would have the ultimate burden of persuasion at trial." Nissan Fire & Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102 (9th Cir. 2000). "The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

"Where the opposing party has not had sufficient time to complete discovery or otherwise marshal facts to oppose the motion, application may be made under Rule 56(f) for a continuance of the proceedings pending completion of discovery." Thi-Hawaii, Inc. v. First Commerce Financial Corp., 627 F.2d 991, 994 (9th Cir. 1980). The Ninth Circuit generally disfavors summary judgment "where relevant evidence remains to be discovered. The burden is on the nonmoving party, however, to show what material facts would be discovered that would preclude summary judgment. If further discovery could not elicit evidence that would raise genuine issues of material fact, summary judgment would be appropriate." Klingele

v. Eikenberry, 849 F.2d 409, 412 (9th Cir. 1988) (citations omitted).

IV. DISCUSSION

A. Plaintiff's First Motion for Summary Adjudication

Plaintiffs' First Motion is based on the adequacy of the witnesses that Defendants have selected to put forward as their deponents pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. First Mot. at 1. Plaintiffs argue that because the burden of proving their twelfth affirmative defense will fall on Defendants, and because Defendants' deponents did not adduce facts to support this defense in their depositions, Defendants will not be able to meet their burden at trial. Id. In order to succeed at the summary adjudication stage, however, Plaintiffs must be able to show that there is no issue of material fact as to this affirmative defense. Horphag Research, 475 F.3d at 1035.

Plaintiffs' First Motion depends upon the purpose of Rule 30(b)(6) of the Federal Rules of Civil Procedure, and the case law that has developed with respect to parties' discovery obligations under this Rule. Rule 30(b)(6) allows a party to name an organization as a deponent, provided that the party describes "with reasonable particularity the matters for examination." Fed. R. Civ. P. 30(b)(6). The organization is then required to "designate one or more officers, directors, or managing agents, or designate other persons who consent to testify" on the organization's behalf. Id. "The person designated must testify about information known or reasonably available to the organization." Id. Because an individual so designated is speaking for the corporation, and not

as an individual, this procedure imposes a significant duty upon the organization to educate the deponent prior to the deposition. See Bd. of Trs. of the Leland Stanford Junior Univ. v. Tyco Int'l Ltd., 253 F.R.D. 524, 526 (C.D. Cal. 2008).

> Rule 30(b)(6) implicitly requires such persons to review all matters known or reasonably available to [the organization] in preparation for the Rule 30(b)(6) deposition. This interpretation is necessary in order to make the deposition a meaningful one and to prevent the "sandbagging" of an opponent by conducting a halfhearted inquiry before the deposition but a thorough and vigorous one before the trial. This would totally defeat the purpose of the discovery process.

United States v. Taylor, 166 F.R.D. 356, 362 (M.D.N.C. 1996). In order to meet the purpose of the Rule, "[i]f a corporation has knowledge or a position as to a set of alleged facts or an area of inquiry, it is its officers, employees, agents or others who must present the position, give reasons for the position, and, more importantly, stand subject to cross-examination." Id. at 362.

Plaintiffs served a Rule 30(b)(6) notice upon Defendants that listed a number of matters for examination, including:

> Your Human Resources Information Processing / Compensation Department from December 31, 1998 to the present;
>
> The initial determination that a job category / job description is or is not exempt from December 31, 1998 to the present;
>
> The initial determination that each job category applicable to the members of the classes is or is not exempt from December 31, 1998 to the present.

First Karczag Decl. Ex. A ("30(b)(6) Notice") ¶¶ 1, 2, 12-14.[3]

Defendants selected Scott White ("White") to serve as their

[3] Justin P. Karczag, attorney for Plaintiffs, submitted a declaration in support of the First Motion. Docket No. 296.

deponent for the above topics. White had been employed with 24 Hour as a Senior Vice President, First Karczag Decl. Ex. F ("White Depo. Tr.") at 11:14-16, and Plaintiffs contend that he had only held that position since March 31, 2008, First Karczag Decl. ¶ 30.

Plaintiffs listed the following topics in their 30(b)(6) notice:

> Any and all changes in the classification status of the members of the managers class from December 31, 1998 to the present;
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> The decision to change the classification of the members of the managers class from exempt to non-exempt effective 4/1/2006;
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> Your FLSA compliance with regard to members of the managers class from December 31, 1998 to present;
>
> Your policies and procedures (written and unwritten) regarding FLSA compliance from December 31, 1998 to the present.

30(b)(6) Notice ¶¶ 6, 8, 10, 16.[4]

Defendants selected Todd Bruhn ("Bruhn") to speak for them with regard to these topics. Bruhn held the title of Senior Director of Staffing, and had previously held various positions within 24 Hour since he had started with the company in September of 2003. First Karczag Decl. Ex. E ("Bruhn Depo. Tr.") at 11:4-12:6.[5]

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[4] Defendants objected to these matters as being vague and ambiguous. See First Karczag Decl. Ex. B. Because of the Court's disposition of the First Motion, it makes no findings regarding these objections at this time. However, the Court does note that of the thirty-two matters noticed for examination by Plaintiff that the Court has before it, Defendants objected to thirty-one as being vague and ambiguous. See id.; First Karczag Decl. Ex. D. Although Defendants refer to these objections as reasons to deny Plaintiffs' Motions, Defendants have not provided any explanation as to why the matters are so vague or ambiguous as to warrant objection.

[5] Defendants imply, without explicitly arguing, that Rule 30(b)(6) required them to select current employees as deponents. Opp'n at

Neither deponent demonstrated a substantial amount of preparation. Bruhn Depo. Tr. at 18:8-22:18; White Depo. Tr. at 22:2-21:11. As it turns out, both White and Bruhn showed significant deficiencies during the course of their depositions. For example, White professed ignorance in response to a wide variety of questions with respect to the company's decisions prior to his employment with 24 Hour. White Depo. Tr. at 67:15-24. Bruhn did not know which of the FLSA overtime exemptions Defendants are claiming applies to the Managers Class. Bruhn Depo. Tr. at 94:6-15. White similarly professed to not have "any information as to what type of exemption was utilized for" the Managers Class. White Depo. Tr. at 68:5-12, 69:2-17. Plaintiffs contend that neither deposition offers a basis to conclude that the Managers Class was exempt from the overtime entitlements of the FLSA. First Mot. at 1.

Plaintiffs are now seeking summary adjudication based on their contention that the deponents' professed ignorance is Defendants' "official position" for the purpose of this suit, and that there is therefore no issue of material fact with respect to whether the

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9; See Decl. of Kathleen Deibert ("Deibert"), Counsel for Defendants, in Opp'n to First Motion, Docket No. 315, ¶ 2 (claiming only that Deibert has tried to locate "a current 24 Hour Fitness employee" with knowledge of the specific exemptions relied upon by Defendants). Defendants note that a former employee, David Brent ("Brent") "oversaw compensation issues" during much of the class period, and left the company around the time that White joined. Opp'n at 9. Defendants did not name Brent as a 30(b)(6) deponent, and they fault Plaintiffs for not deposing him on their own initiative. Id. However, the text of Rule 30(b)(6) leaves no doubt that a former employee can and should be designated as a Rule 30(b)(6) deponent, if the former employee is the most knowledgeable individual and as long as the former employee consents. An organization may designate any "persons who consent to testify on its behalf." Fed. R. Civ. P. 30(b)(6). Defendants do not indicate whether they ever requested that Brent act as a Rule 30(b)(6) deponent.

members of the Managers Class were exempt from overtime under the FLSA. First Mot. at 17-20. According to Plaintiffs, by claiming that they did not know which exemption categories apply to the Managers Class, the deponents were in effect claiming that Defendants had no position as to which FLSA exemptions apply, and possess no information to support any particular exemption. Id. Defendants have, by and large, not attempted to cite specific evidence to show a disputed issue of material fact in their Opposition -- instead, they argue that Plaintiffs have not shown an absence of disputed facts, and have sought to continue or dismiss the Motion until discovery is complete. Opp'n at 11.

As the moving party, Plaintiffs bear the initial burden of proving that there are no issues of material fact with respect to Defendants' affirmative defense -- even though Defendants will bear the burden of proving this affirmative defense at trial. See Nissan Fire & Marine Ins, 210 F.3d at 1102. Of course, "the burden on the moving party may be discharged by 'showing' -- that is, pointing out to the district court -- that there is an absence of evidence to support the nonmoving party's case." Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Nevertheless, the Court concludes that Plaintiffs cannot meet their summary adjudication burden by simply pointing to Defendants' apparently inadequate depositions. Plaintiffs' have brought this Motion before the end of discovery. The Motion is, in essence, a categorical objection to all evidence that Defendants might bring to support their affirmative defense. It is an objection to hypothetical evidence that the Court has had no opportunity to review in light of the deposition testimony. Plaintiffs have shown, at best, that

Defendants will face difficulties should they seek to meet this burden with certain evidence in the future. However the Court will not accept that the Bruhn and White depositions have precluded Defendants from bringing any evidence whatsoever in support of one of the FLSA exemptions, and that there will therefore be no issues of material fact as to Defendants' twelfth affirmative defense.

Plaintiffs' preemptive methods contrast sharply with the procedures used in the case upon which Plaintiffs primarily rely. In Rainey v. American Forest & Paper Association, a plaintiff cited the defendant's failure to prepare a Rule 30(b)(6) deponent to overcome a specific affidavit upon which the defendant relied. 26 F. Supp. 2d 82 (D.D.C. 1998). Rainey involved a plaintiff who claimed to have been misclassified as "exempt" under the FLSA, and improperly denied overtime payments. Id. at 86-87. The defendant corporation had designated a Rule 30(b)(6) deponent who was incapable of answering many questions about the plaintiff's duties, and whose answers suggested that the FLSA overtime exemption claimed by the defendant was inapplicable. Id. at 92. Because of this inadequate deposition, the district court refused to accept a more detailed and knowledgeable affidavit from the plaintiff's former supervisor (who had since left the defendant company), which purported to offer additional evidence of the plaintiff's exempt status. Id. at 92-96. The Court held that to allow the affidavit would contradict the purpose of Rule 30(b)(6), since the defendant could have either designated the former employee as a deponent or prepared its designee to represent what the former employee knew. Id.

Rainey demonstrates that Defendants may well be precluded from

relying on certain evidence in the future, should they seek to rely upon particular pieces of evidence to establish an issue of disputed fact.[6] However, Rainey does not suggest that an inadequate Rule 30(b)(6) deposition may categorically preclude a party from bringing any evidence -- indeed, the Rainey court found only that a single, specific affidavit was inappropriate, and discussed a variety of other types of evidence that Defendants offered to support their affirmative defense without suggesting that they were precluded by the inadequate deposition. Id. at 88-91, 92-93. Other cases cited by Plaintiffs provide similar instances in which parties invoke inadequate deposition testimony to object to particular evidence offered by the other party, rather than to preclude the other party from presenting any and all evidence. See Radobenko v. Automated Equipment Corp., 520 F.2d 540, 544 (9th Cir. 1975) (finding that particular "proofs" that were offered by Plaintiff did not create "genuine" issues of fact because they directly contradicted deposition testimony); Casas v. Conseco Fin. Corp., No. 00-1512, 2002 U.S. Dist. LEXIS 5775, *32-34 (D. Minn. Mar. 31, 2002) (rejecting declaration that directly contradicted deposition testimony of Rule 30(b)(6) deponent).

The Bruhn and White depositions, standing alone, do not provide Plaintiffs with a basis for halting discovery and

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[6] Some examples of evidence that may be precluded include affidavits from former employees who were apparently more knowledgeable than either Bruhn or White -- such as Brent -- with respect to a topic upon which Bruhn or White was properly selected to expound upon. Defendants may be foreclosed from offering an internal report or study that justifies a particular exemption category after the Rule 30(b)(6) deponents have claimed to be ignorant of such reports. See Bruhn Depo. Tr. at 105:14-106:19. On the other hand, Defendants may offer evidence that they can establish was not "known or reasonably available to" Defendants when the depositions took place. See Fed. R. Civ. P. 30(b)(6).

precluding Defendants from offering any and all evidence in support of their affirmative defense. Whatever evidence Defendants ultimately rely upon will need to be evaluated in light of these depositions, and the Court may examine whether each piece of evidence was precluded or obfuscated by the depositions, whether the deposition left open or referred to the existence of the specific evidence, or whether the Rule 30(b)(6) notice properly framed the issue so that the Defendants could be bound by their designation. These are inquiries that are best performed after Defendants have put forward specific evidence -- rather than hypothetically or categorically -- and the Court will not require Defendants to submit their evidence until after discovery is complete (or at least until class members have been deposed). By denying the First Motion, the Court is not indicating that the Defendants met all of their obligations under Rule 30(b)(6) with respect to the White and Bruhn depositions -- instead, the Court finds only that it would be proper to evaluate each piece of evidence that Defendants eventually offer individually, and not hypothetically, in light of these depositions. Because Defendants are not categorically precluded from bringing evidence to support their twelfth affirmative defense, Plaintiffs have failed to persuade this Court that there are no issues of disputed fact with respect to this defense.

Plaintiffs argue that Defendants' failure to prepare its deponents leaves Plaintiffs vulnerable to "trial by ambush." First Mot. at 15-16. However, Plaintiffs need not proceed in ignorance as to which of the FLSA's exemptions Defendants will assert at trial or the evidence that Defendants will use to support there

position. Discovery is not yet over, and Plaintiffs may seek to retake the depositions. Plaintiffs may still seek to pursue discovery of Defendants' legal position through standard discovery procedures, such as motions to compel or contention interrogatories. If discovery proves futile, Plaintiffs may object to the specific evidence that Defendants later attempt to rely upon, provided that Plaintiffs have a good faith argument that the evidence has been precluded by Bruhn's or White's deposition.

Plaintiffs' First Motion is DENIED because Plaintiffs have failed to persuade this Court that there are no disputed issues of material fact. Additionally, because discovery is not yet complete, and particularly because Defendants have not yet deposed any members of the Managers Class, the Court finds that Defendants should have an opportunity to complete discovery. Defendants' Rule 56(f) Motion is GRANTED.[7]

B. Plaintiffs' Second Motion For Summary Adjudication

Plaintiffs' Second Motion has been brought on behalf of the Trainers Class. Plaintiffs seek a finding that Defendants are liable to the Trainers Class for breaches of the FLSA, based on two distinct theories. First, Plaintiffs claim that, prior to November of 2003, Defendants excluded the time that trainers spent in training sessions, and only considered time spent performing other

[7] The parties spend a considerable amount of space arguing over the propriety of Defendants' Rule 56(f) Motion, which was formally filed after Plaintiffs' Motions for Summary Adjudication had been fully briefed. Nevertheless, Defendants invoked Rule 56(f) in their First Opposition. First Opp'n at 11. Moreover, given the context of Plaintiffs' First Motion, which makes no affirmative showing as to the exemption status of the Managers Class and attempts to categorically preclude all further discovery on this topic, Defendants' plans to depose members of the Managers Class are sufficiently particular to meet Defendants' burden under Rule 56(f).

duties, when calculating the amount of time that trainers worked. Second Mot. at 18-19. Plaintiffs claim that this violated the FLSA, which requires overtime compensation for time worked in excess of forty hours per week, 29 U.S.C. § 207(a)(1). Id. Second, Plaintiffs claim that even when Defendants did pay the trainers overtime, they initially paid only a portion of the overtime amount, and later paid the rest of the overtime amount through a "recalculation" that was added to the following pay check. Id. at 19-20. Plaintiffs claim that this violated the provisions of 29 C.F.R. § 778.106, which requires overtime compensation be paid on the employees' "regular payday." Id.

The Court does not reach the merits of the Second Motion. Instead, it concludes that it would be premature to reach a conclusion as to Defendants' liability to a class of employees that has only been conditionally certified. See Mar. 24, 2008 Order at 15. As this Court has previously outlined, and as Plaintiffs themselves initially requested, this Court has adopted a two-step process for certification. Id. at 4-5. At this stage, Plaintiffs have only been required to make a "minimal showing" that the members of the Trainers Class were "similarly situated," in accordance with the procedures adopted by the district courts of this circuit to handle collective actions under the FLSA. Id. at 4. The purpose of this first-step review is to "determine whether a collective action should be certified for the purpose of sending notice to potential class members." Wren v. RGIS Inventory Specialists, 256 F.R.D. 180, 211-12 (N.D. Cal. 2009). This Court explicitly stated that it would conditionally certify the class only as the first step in a two-step process, "in anticipation of a

later more searching review." Id. at 4-5. The Tenth Circuit has described the second step as follows:

> At the conclusion of discovery (often prompted by a motion to decertify), the court then makes a second determination, utilizing a stricter standard of "similarly situated." During this second stage analysis, a court reviews several factors, including (1) disparate factual and employment settings of the individual plaintiffs; (2) the various defenses available to defendant which appear to be individual to each plaintiff; (3) fairness and procedural considerations; and (4) whether plaintiffs made the filings required by the ADEA before instituting suit.

Thiessen v. Gen. Elec. Capital Corp., 267 F.3d 1095, 1102-03 (10th Cir. 2001); See also Hipp v. Liberty Nat'l Life Ins. Co., 252 F.3d 1208, 1219 (11th Cir. 2001) (approving two-tier approach); Wren, 256 F.R.D. at 211-12 (noting that district courts within Ninth Circuit have adopted this approach).

Plaintiffs themselves explicitly relied upon this two-step certification process, and claimed to be only subject to the relaxed standards applicable at the first stage of certification. See Motion to Certify Class of Personal Trainers, Docket No. 160, at 4, 15-17 (acknowledging that "at the second stage . . . the court engages in a more searching review"). Defendants have claimed that they intend to move for decertification at the close of discovery. Kloosterman 56(f) Decl. ¶ 4. Plaintiffs have not stated any reason to depart from the procedures set out in this Court's previous Order.

Given the fact that a stricter review of the Trainers Class is still pending, it would be inappropriate to enter a judgment as to the liability of Defendants to this Class at this time. The Court has not received briefing from either party on the issues of final

certification, and it is not currently in a position to reach a conclusion on this issue. The Court finds only that it would be inappropriate to enter judgment as to Defendants' liability to the Trainers Class before the second stage of certification is complete. Plaintiffs' Second Motion is therefore DENIED WITHOUT PREJUDICE. Plaintiffs may move for summary adjudication on this issue at a later time.[8]

V. CONCLUSION

Plaintiffs' Motion for Summary Adjudication Number One is DENIED. This denial is without prejudice as to Plaintiffs' ability to later object to particular evidence that is submitted by Defendants, or to move for summary adjudication with respect to Defendants' twelfth affirmative defense after discovery is complete. In accordance with the denial of Plaintiffs' first Motion, Defendants' Motion for Denial or Continuance of Plaintiffs' Motions for Summary Adjudication Under Rule 56(f) is GRANTED.

Although this Court has concluded that Defendants' conduct is not grounds for summary adjudication with respect to Defendants' affirmative defense, the Court orders Defendants to show cause why they should not face other sanctions for failure to comply with Rule 30(b)(6) of the Federal Rules of Civil Procedure. Defendants

[8] Because the Court does not reach the merits of the Second Motion, and because it does not rely upon the substance of Defendants' declarations to reach its conclusions with respect to the First Motion, it is unnecessary for this Court to resolve Plaintiffs' voluminous evidentiary objections, submitted by Plaintiffs in response to Defendants' declarations in opposition to either Motion. Docket Nos. 325, 326, 329, 330, 331, 332, 333, 334, 336. The Court notes in passing that many of these objections were simply rote recitations of the rules of evidence, unsupported by explanations or reasoned justifications.

shall show cause in writing no later than Friday, November 30, 2009. Defendants' response shall not exceed fifteen (15) pages. The Show-Cause Hearing is scheduled for Friday, December 4, 2009, at 10:00 a.m. in Courtroom 1, on the 17th floor, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102. All parties are ordered to appear at the Show-Cause Hearing.

Plaintiffs' Motion for Summary Adjudication Number Two is DENIED WITHOUT PREJUDICE as to Plaintiffs' ability to file a motion for summary adjudication on this same issue in the future. However, this Court will not resolve any such motion until it is satisfied that the Trainers Class is appropriate for final certification.

IT IS SO ORDERED.

Dated: November 10, 2009

UNITED STATES DISTRICT JUDGE